

APPEAL NO. 032758
FILED DECEMBER 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A combined contested case hearing was held on September 23, 2003. In Docket No. (Docket No. 1), the hearing officer determined that the date of injury is (date of injury for Docket No. 1); that respondent 1 (claimant) sustained a compensable repetitive trauma injury on (date of injury for Docket No. 1), because the appellant (carrier 1) waived its right to contest compensability of the claimed injury under Section 409.021; that the claimant had disability beginning on June 26, 2001, and continuing through October 17, 2001; and that carrier 1 is not relieved from liability even though the claimant did not timely notify her employer of the claimed injury as required under Section 409.002, because carrier 1 waived its right to contest compensability under Section 409.021. Carrier 1 appealed all of the above-mentioned determinations. The claimant responded, urging affirmance. The appeal file does not contain a response from respondent 2 (carrier 2).

In Docket No. (Docket No. 2), the hearing officer determined that the date of injury is (date of injury for Docket No. 1); that the claimant did not sustain a compensable repetitive trauma injury on (date of injury for Docket No. 2), or (date of injury for Docket No. 1) (because carrier 2 did not have coverage on that date); that the claimant did not have disability because she did not sustain a compensable injury; that carrier 2 is relieved from liability under Section 409.002 because the claimant failed to timely notify her employer of the claimed injury pursuant to Section 409.001; and that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. None of the above-mentioned determinations in Docket No. 2 have been appealed, and they have become final. Section 410.169.

DECISION

Affirmed.

WAIVER AND COMPENSABILITY

Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. See Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The hearing officer found carrier waiver due to the fact that carrier 1 received written notice of injury on January 24, 2001, and disputed compensability on March 13, 2001, a date more than seven days after January 24, 2001. We find no merit in carrier 1's assertion that because it disputed a prior claim with a different date of injury, it had no obligation to timely dispute the second claim with a different date of injury. The two claims were assigned different claim numbers by the

Texas Workers' Compensation Commission, and carrier 1 had an obligation to respond to each in a timely manner.

Carrier 1 next argues that it did not waive its rights under Section 409.021, because the claimant did not sustain an injury. Carrier 1 cites Continental Casualty Company v. Williamson, 971 S.W.2d 108 (Tex. App.-Tyler 1998, no pet.). In Williamson, the court held that "if a hearing officer determines that there is no injury, and that finding is not against the great weight and preponderance of the evidence, the carrier's failure to contest compensability cannot create an injury as a matter of law." The Appeals Panel has recognized that Williamson is limited to situations where there is a determination that the claimant had no injury, as opposed to cases where there is an injury which was determined by the hearing officer not to be causally related to the claimant's employment. Texas Workers' Compensation Commission Appeal No. 020941, decided June 6, 2002. In this case, the hearing officer determined and the evidence shows that the claimant did have an injury in the form of bilateral carpal tunnel syndrome (CTS). Because carrier 1 waived its right to contest the claimed CTS injury under Section 409.021, the hearing officer did not err in determining that the claimant's CTS was compensable.

DISABILITY, DATE OF INJURY, AND NOTICE

The hearing officer did not err in making the complained-of disability, date-of-injury, and notice determinations. Carrier 1's challenge to these determinations is premised upon the success of its arguments with regard to waiver and compensability, above. Given our affirmance of the hearing officer's waiver and compensable injury determinations, we likewise affirm the disability, date of injury, and notice determinations.

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier 1 is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Fremont Industrial Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

The true corporate name of insurance carrier 2 is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**HAROLD FISHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge